

properties are sold under Order of Court, then the amount realised can be apportioned between the tenants for life and the remaindermen on the same principle as would apply in cases where mortgaged property is realised. The Order in *In re Horn's Estate*, (*Ibid* at p. 229) can be adapted, but the word 'and' must be added after the date 17th December 1915, in the 13th line of p. 229, such word having been accidentally omitted from the report.

Order accordingly.

Solicitors for the applicants—

Allen & Gledhill.

Solicitors for Lim Ah Kow—

Rodyk & Davidson.

Solicitor for Mr. C. F. J. Ess—

R. C. H. Lim.

Solicitors for Mr. S. H. Cheah—

John G. Campbell & Co.

[COURT OF CRIMINAL APPEAL]
McELWAIN, C.J., TERRELL & HORNE, JJ.
June 3, 1938.

CHIA CHAN BAH alias CHIAH AH SAN
vs.

THE KING

[CRIMINAL APPEAL No. 15 of 1938]

*Criminal law—murder—Defence of Insanity
—onus—degree of proof—section 106 of The
Evidence Ordinance.*

In a trial for murder it is incumbent on the Crown to prove beyond reasonable doubt that the accused killed the deceased by an act which constitutes murder within the meaning of section 300 of the Penal Code. Where the defence is insanity the onus is on the accused to prove that he was probably insane. This onus is placed upon him by section 106 of the Evidence Ordinance, but the law does not require an accused person setting up an exception such as insanity as a defence to prove that exception beyond reasonable doubt. It is sufficient if he induces in the mind of the jury a feeling that he probably was insane though the jury may have its doubt whether he really was insane.

Rex v. Sodeman (1936) 2 All E. R. 1138 and *Lim Tong v. The Public Prosecutor*, (1938) 7 M.L.J. 41 referred to.

The appellant was convicted at the Penang Assizes held on the 17th February 1938 of the murder of one Uni Tee Wan alias Lap Pheng on 14th July 1937 and was sentenced to death. The defence was that the accused was insane at the time of the killing. The accused appealed.

Held, that the plea of insanity failed inasmuch as there was nothing in the evidence to suggest that the appellant was probably of unsound mind on the day of the commission of murder or to discharge the mild burden of proof prescribed in *Sodeman's Case* much less probable that on the day of the crime the appellant was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

CRIMINAL APPEAL.

de Mello, for the Appellant.

Howe, Crown Counsel, for the Crown.

The judgment of the Court of Criminal Appeal, consisting of McELWAIN, C.J., TERRELL & HORNE, JJ. was as follows:

The appellant was convicted on the 17th day of February 1938 at Penang Assizes of the offence of murder and was sentenced to death. He was late in lodging his appeal and the Court had no power to enlarge the time for appealing, but the Governor-in-Council referred the whole case to the Court of Criminal Appeal under section 21 of the Court of Criminal Appeal Ordinance (Chapter 11).

At the trial the accused did not give evidence. When asked the usual question as to whether he wished to give evidence on oath or to make an unsworn statement from the dock, or to say nothing, he replied, "I have nothing to say, My Lord." He called no evidence.

It was proved that on the 14th July 1937 the appellant killed Uni Tee Wan alias Lap Pheng under circumstances that would clearly amount to murder unless the accused was shewn to be insane at the time of the killing. The only defence was that the accused was insane.

The appeal is against the failure of the Jury to find that the accused was insane on 14th July when he committed the act and he founded his appeal on alleged misreception of evidence and on misdirection, particulars of which were given in the appellant's petition to the Governor-in-Council to remit the case to this Court.

The evidence which is complained of was

- (1) evidence of the appellant's conviction in 1935 for the possession of an unlicensed revolver
- (2) evidence that the deceased was the person who gave the information which led to the conviction.

This evidence was admitted to prove motive for the killing, and to prove such motive it was necessary to prove that the appellant knew who the informer was. There was some evidence from which it might possibly have been inferred that the appellant did know that the deceased was the informer but it is unnecessary to deal with this as the appellant made a confession to a magistrate which was in evidence. In this confession the appellant commenced by stating that in 1935 the deceased planted a revolver on him in consequence of which he was arrested, convicted, and sentenced to one year rigorous imprisonment and eighteen months Police supervision. He also stated that on 12th July 1937 a friend Neo Poon Tee had told him (appellant) that deceased had been teasing his (Neo Poon Tee's) wife and had put him (appellant) into trouble, and asked him (appellant) to stab deceased to death, and that Neo Poon Tee would help him to get away by paying his expenses to Siam or China.

There is nothing to indicate from this confession that it was on 12th July that the appellant first knew that deceased was the informer in 1935. Rather would it appear that assuming the confession to contain a true record of the alleged conversation with Neo Poon Tee, that the latter reminded the appellant of his grievance against the deceased as an additional inducement to him to kill the deceased. If this is not a correct view of the confession and if it really meant that it was on the 12th July 1937 that he first became aware that it was the deceased who had betrayed him in 1935, then the delay of a year in taking revenge could not be urged against the betrayal being the motive for the killing. At the trial his counsel argued that revenge could not have been the motive. "The motive put forward by the Crown for this stabbing is that of revenge; revenge because the deceased gave the accused away to the police. But the accused knew that, he must have known it, the very moment he was arrested. The accused and the deceased were the only ones who knew about that revolver, and the deceased actually accompanied the police to the house on the raid."

That point, the staleness of the alleged motive was also urged in the petition which the appellant addressed to the Governor-in-Council and which alone gives the particulars of the grounds of appeal.

We think the evidence complained of—omitting some hearsay—did prove that the accused was convicted in 1935 and that the accused knew that the deceased was the informer, thus providing some evidence of motive and was admissible for this purpose, but in any case it went no further than the accused's own confession which it corroborated.

There was, however, another piece of evidence to which we must refer. While we think the conviction in 1935 was relevant, this was proved not by a formally drawn up record of conviction but by a certified copy of an extract from the District Judge's note book "convicted. Admits conviction V. C. G. Hurt Section 324 in May 1933. 12 months R.I. and 18 months police supervision." This reference to an earlier conviction for voluntarily causing grievous hurt had nothing to do with the motive for killing the deceased. It was evidence of bad character and should not have been allowed to go to the jury. Had the killing of the deceased by the appellant not been amply proved and admitted in the appellant's confession, the admission of this evidence of the 1933 conviction would have jeopardized the present conviction.

Mr. de Mello argued that evidence of a crime of violence in 1933 tended to negative the defence of insanity. We think that it does not necessarily follow that, the killing having been admitted and established beyond yea or nay, evidence of a previous conviction is inadmissible if it only tends to rebut a suggestion of insanity.

In the peculiar circumstances of this case, the killing being proved and admitted and the only issue in dispute being the sanity or insanity of the appellant, the evidence could have no effect in proving what the Crown had to prove and it is not inadmissible just because it tends to disprove what the accused must prove, or shew to be a probable inference from the evidence as a whole, that he was insane at the time of the killing.

Confined to these very narrow limits the admission of this evidence—even if it is worth anything at all as evidence of sanity—is of no avail to the appellant.

In a trial for murder it is incumbent on the Crown to prove beyond reasonable doubt that the accused killed the deceased by an act which constitutes murder within the meaning of section 300 of the Penal Code. Where the defence is insanity the onus is on the accused to prove that he was probably insane. This onus is placed upon him by section 106 of the Evidence Ordinance, but the law does not require an accused person setting up an exception such as insanity as a defence to prove that exception beyond reasonable doubt. It is sufficient if he tip the scale of probability in his favour—if he induces in the mind of the jury a feeling that he probably was insane though the jury may have its doubts whether he really was insane. As it is put in *Rex v. Sodeman* (1936) 2 All England Reports, 1138 the onus on an accused in setting up such an exception as insanity is no higher than the onus on a plaintiff or defendant in a Civil Suit. See too *Lim Tong v. The Public Prosecutor*, 7 M.L.J. 41.

This onus which the law places on an accused person may be discharged by the Crown evidence: it is not incumbent on the accused to discharge it by his own evidence or by that of witnesses called by him.

In the present case the appellant relies on three matters as establishing a reasonable probability that he was insane on 14th July 1937, first the inadequacy of the alleged motive of revenge, secondly, that on 4th August he was sent to Dr. Samy with a report that he had behaved rather peculiarly the previous night, and thirdly, the fact that from the 11th August to 15th August he shewed signs of mental derangement and subsequently on 16th August he was certified insane after Dr. Samy had gone on leave, the Certificate setting out the following grounds indicating unsoundness of mind:

1. Walking round his cell completely naked.
2. Purposeless movements of his arms and hands.
3. Mutters to himself continuously.
4. Says he has rented the cell for \$4 per month.
5. Tried to attack other patients with trestles when in lock-up ward.

During Dr. Samy's examination the following questions were asked and answers given:—

- Q. But on the 11th August he was mentally deranged?
 A. Yes, he showed signs.
 Q. Will you agree then that this particular form of mental derangement does come on in a period of say 24 hours?
 A. In an obvious form, that is to say, he might have had it earlier but not shown the definite signs.
 Q. You will agree then that it would come on in an obvious form in 24 hours?
 A. I did not say that it comes on in an obvious form in 24 hours.
 Q. Very well, I will put it this way: do you agree that with this man, one doctor, Dr. A, could quite well examine him on a Wednesday and say this man is normal, and another doctor, Dr. B, could examine him the next day, Thursday, and find that he was mentally deranged?
 A. Yes, it is possible.

Judge: Is it possible that visible signs of mental derangement would come on within 24 hours?

- A. Yes.
 Q. It is possible then also that prior to the 14th July which was the date of this stabbing, the accused on account of worry or for any other reason may possibly have been in this deranged state, *possibly*—if you are going to tell us that you exclude the possibility, we shall want very definite reasons—?
 A. I do not exclude the possibility entirely.
 Q. Very well then, you admit that it is possible?
 A. It is possible.
 Q. And in view of the form of this mental derangement, and in view of its coming on within a period of 24 hours, you agree that, unless a Doctor can come here and say that he examined the accused on the 14th July, it is quite impossible to say what his state of mind was on that date?
 A. It is not possible to say what his state of mind was on that date.

Judge: It is not possible for *you* to state or any Doctor unless he had examined him on that day?

- A. That is so, my Lord.
 Q. One more question and I have finished. I want you just to explain to the jury again that the reason for that is that

he might have been examined on the 13th July and found to be normal; he could have been examined on the 15th July and found to be normal, but that would not exclude the possibility of his being abnormal on the 14th, is not that so?

- A. Yes, it does not exclude the possibility.
 Q. You told us that it was on the 11th August that you first noticed anything strange about the accused; that his speech was incoherent and he said he did not sleep the previous night. Then on the 12th you told us, he was noisy and the speech still incoherent and that continued till the 15th August, that was the last time you saw him over that period. Are those the only reasons you can put forward for saying that he is mentally unbalanced: incoherent speech?
 A. He did show some other delusions, saying that carriages were waiting for him to take him home.
 Q. During what period?
 A. 11th to the 15th.
 Q. Would you agree that the test of medical insanity and legal insanity which excused responsibility is a very different thing. There is medical insanity from a doctor's point of view and there is legal insanity from the point of view of the law?
 A. Yes.
 Q. And that the "legal" insanity is that by reason of disease of the mind the person does not understand the nature of the act he does, or if he does understand what he is doing, he does not know he is doing wrong. Those are the tests according to legal insanity which absolves a person from the consequences of his acts. That is very different from medical insanity?
 A. Yes.
 Q. Could you say then during the period the 11th August to the 15th August, the accused did not know what he was doing or saying?
 A. I would not say that.
 Q. Do you know of any reason why the accused—were there any grounds for the accused attempting to assault the dresser or the attendant?
 A. Not particularly.
 Q. There had not been any argument before, had there?
 A. No argument.

Against this evidence was that of Lim Ah Kim who had known the accused for several years and who swore that he had never known or heard of

the accused acting in a strange manner; Dr. Samy, who was the prison doctor, said that he had seen the accused during the ten months he was in prison from October 1935 and that his mental condition was normal. The accused was arrested on 17th July, when he spoke normally and appeared sensible to the police. On the evening of 17th he made a long detailed statement to a magistrate. On the morning of 19th he was seen by Dr. Apparajoo, when he talked sensibly and Dr. Apparajoo suspected nothing. Dr. Samy saw him in the prison for the first time after his arrest on 20th July and saw him every day and questioned him till 4th August. He appeared normal and answered questions quite rationally. From 22nd July to 3rd August he was in hospital with gastro-enteritis. During the first week Dr. Samy spent 10 to 15 minutes with him each day, and later 5 to 10 minutes. On 4th August Dr. Samy received information that accused had had mental trouble the previous day and he was transferred to the General Hospital for observation. Dr. Samy still observed him and noticed nothing abnormal until 11th, when "his speech was rather incoherent, and he said he did not sleep the previous night. But the night dresser reported that he had slept well. On the 12th August he was noisy his speech was still incoherent. He was in the same condition until 15th August." That was the last time Dr. Samy saw him until he returned from leave in December.

Having been certified insane accused was sent to the Mental Hospital, Singapore, and he was ultimately returned to Penang certified as sane. From 4th December to the date of the trial (17th February 1938) Dr. Samy kept him under observation and noticed nothing abnormal.

The case for the defence was put clearly and fairly to the Jury by the trial Judge. They were correctly charged on the lesser degree of proof required of the accused.

It was argued before this Court that the trial Judge had in effect told the Jury that the accused must adduce evidence of a document or by witnesses that he was insane. We see nothing in the summing up to suggest that the jury could not lawfully find a special verdict on the Crown evidence or that the accused must call or give evidence.

There is nothing in the criticism of the judge's statement that "insanity, in so many capital cases is put up as a last resort."

The verdict of the jury negatived the defence that the appellant was insane on 14th July, and although this Court has power under section 7(4) of the Court of Criminal Appeal Ordinance to quash the sentence and order that the appellant be kept in custody, such power can only be exercised if it appears to this Court that the accused was at the time the act was done incapable by reason of unsoundness of mind of knowing the nature of the act or that it was wrong or contrary to law.

This Court finds nothing in the evidence to suggest that the appellant was probably of unsound mind on the 14th July or to discharge the mild burden of proof prescribed in *Sodeman's* case, much less that on that date the accused was incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The appeal is dismissed.

Appeal dismissed.

[SPECIAL CRIMINAL JURISDICTION]

TERRELL, J.

March 5, 1938.

REX v. G. H. KIAT.

[SINGAPORE POLICE COURT CASES Nos. 11403 and 11404 of 1938]

Quarantine & Prevention of Disease—dogs—owner's duty to ensure effective control of—master's liability for servant's acts—mens rea—Quarantine (Veterinary) Rules, 1936, Rule 49 (ii) as amended by Government Gazette Notification dated 24-9-1937.

Two dogs belonging to the accused were found out of doors. They were neither led, muzzled nor confined in an enclosed area from which it was impossible to escape. When the accused set out from his house early in the morning of the day of commission of the offence charged against him he left the dogs properly tied up indoors and in charge of his servant. He also gave the servant strict instructions to muzzle the dogs securely, but she disobeyed the instructions. The accused had no knowledge that the offence had been committed. Charged with contravening Rule 49 (ii) of the Quarantine (Veterinary) Rules, 1936, as amended by Government Gazette Notification dated 24th September 1937, the accused pleaded guilty and a nominal fine was imposed in each case. The Magistrate felt a doubt whether in the absence of proof of *mens rea* the convictions were sustainable, and referred this point to the High Court for decision.

Held, that the prohibition contemplated by Rule 49 (ii) is absolute, there being no such words as "knowingly" or "negligently" which would have the effect of casting upon the prosecution the burden of proving *mens rea* or of affording the accused an opportunity of proving that he acted innocently.

The absolute prohibition provided by the rule made under the Quarantine and Prevention of Disease Ordinance is justified by the consideration that the strictness of the rule is necessary for the public benefit and protection. A master is the only person in a position to control his servants; and, accordingly, the owner is made responsible for the acts of his servant whether or not such servant has carried out his master's instructions.

SPECIAL CASE STATED.

The facts of the case and the point of law stated for determination by the High Court sufficiently appear from the headnote above.

Mallal for the accused.

Howe, Crown Counsel, for the Crown.

Cur. Ad. Vult.

TERRELL, J.—This is a special case referred by the Fourth Magistrate to the High Court under the provisions of section 317 of the Criminal Procedure Code.